



STATE OF DELAWARE  
Office of Management and Budget, Human Resource Management

**Guidelines on Equal Employment Opportunity (EEO)  
and Affirmative Action (AA)**

**Introduction**

These guidelines are written to help state agencies, specifically managers and supervisors, to succeed in dealing with equal employment opportunity and affirmative action responsibilities in compliance with Executive Order No. 8. The Executive Order is clear in its direction to state agencies to pursue equal employment opportunities for all state employees and applicants. Under the Executive Order, state agencies are required to develop affirmative action plans, prescribed by Human Resource Management, to ensure compliance with federal and state laws. Each executive branch agency is accountable for compliance by including measures/statements in all managers' performance plans and agency strategic plans.

Managers and supervisors are critical to the success of equal employment opportunities in state government. They make all the decision, with advice from human resource personnel, which directly affect the success or failure of equal employment opportunity.

**Objective of EEO and AA**

The objective of equal employment opportunity and affirmative action in state government is to provide a full and fair opportunity for all employees regardless of age, color, disability, ethnicity, gender, nationality, race, religion, sexual orientation, marital status, veteran or military status, gender identity, genetic information, and sex, including pregnancy.

**Definitions**

**Equal Employment Opportunity** is: equal consideration for a job; applicable to all citizens; essential to fair employment practices; and required by state and federal laws.

**Affirmative Action** is: the tool that provides positive steps to assure diversity and parity in the work place by creating opportunities for qualified protected class members to fairly compete for positions.

**Protected Class Members** are: individuals (minorities, women, people with disabilities, and individuals at least 40 years of age and above) who are specifically protected by statute against employment discrimination.

**People with Disabilities** are: people who have a verifiable physical or mental impairment which substantially limits one or more major life activities, have a record of such impairment, or are regarded as having such impairment. The ADA defines "major life activities" as the basic activities that the average person in the general population can perform with little or no difficulty, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, sitting, standing, lifting, and reaching. Major life activities also include the operation of major bodily functions including but not limited to immune, normal cell growth, digestive, bowel, bladder, genitourinary, hemic, special sense organs and skin, lymphatic, neurological, brain, respiratory, circulatory, endocrine, reproductive, musculoskeletal, special sense organs, cardiovascular. This list of examples is not exhaustive

**SUMMARIES OF EQUAL EMPLOYMENT OPPORTUNITY LAWS, REGULATIONS,  
AND EXECUTIVE ORDERS**

<b>FEDERAL</b>	
Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972 and 1991. 42 U.S.C. 1971, 1983, 2000e-2h.	Prohibits discrimination in employment because of race, color, religion, gender, or national origin. It covers all terms and conditions of employment, and may subject an employer to liability for discriminatory acts that occur in the workplace. Strengthens and improves Federal civil rights laws to provide for damages in cases of intentional employment discrimination and unlawful harassment in the workplace and to clarify provisions regarding disparate impact actions.
Age Discrimination in Employment Act of 1967, as amended. 29 U.S.C. 621, <u>et seq.</u>	Prohibits discrimination based on age against individuals who are age 40 and above.
Vietnam Era Veterans Readjustment Assistance Act of 1974. 38 U.S.C. 219, <u>et seq.</u>	Requires federal government contractors and subcontractors over \$10,000 to take affirmative action to employ and advance in employment Veterans with disabilities and Veterans of the Vietnam Era.
Family Medical Leave Act of 1993 as amended 29 U.S.C. 2601, <u>et seq.</u>	Entitles an eligible employee to take up to a total of 12 workweeks off during a 12-month period for the birth/adoption of a child or to care for a spouse or immediate family member with a serious health condition or when the employee is unable to work because of a serious health condition or for Military Family Leave to address certain qualifying exigencies. And entitles an eligible employee to take up to a total of 26 workweeks off for Military Family Leave to care for a covered service member during a single 12-month period. Employers covered by the law are required to maintain any pre-existing group health coverage and once the leave period is concluded, to reinstate the employee to the same or an equivalent job with equivalent employment benefits, pay, and other terms and conditions of employment.
Federal Executive Order discrimination in 11246 of 1965, as amended by Executive Order 11375 of 1967. 11478 or 2014	Prohibits federal contractors and sub-contractors from discriminating in areas of employment, selection, promotion, compensation, granting of benefits, training, Or employment opportunities because of race, color, religion, national origin, or gender.
Genetic Information Nondiscrimination Act (GINA) - PUBLIC LAW 110-233 MAY 21, 2008	<i>Title II of the Genetic Information Nondiscrimination Act of 2008, which prohibits genetic information discrimination in employment, took effect on November 21, 2009.</i> Under Title II of the Genetic Information Nondiscrimination Act (GINA), it is illegal to discriminate against employees or applicants because of genetic information. Title II of GINA prohibits the use of genetic information in making employment decisions, restricts acquisition of genetic information by employers and other entities covered by Title II, and strictly limits the disclosure of genetic information. The EEOC enforces Title II of GINA (dealing with genetic discrimination in employment). The

	Departments of Labor, Health and Human Services, and the Treasury have responsibility for issuing regulations for Title I of GINA, which addresses the use of genetic information in health insurance.
Americans With Disabilities Act of 1990 (ADA) and Amendments Act (ADAAA), 42 U.S.C. 12191, <u>et seq.</u>	Makes it unlawful to discriminate in employment against a qualified individual with a disability. The ADA also outlaws discrimination against individuals with disabilities in state and local government services, public accommodations, transportation, and telecommunications.
<b>STATE</b>	
19 Delaware Code Sections 740-745 – Employment First Act (HB 319) 146 <sup>th</sup> General Assembly	All persons with disabilities, including veterans with service-connected disabilities, have a right to the opportunity for competitive employment. To promote the realization of this right, this bill creates the Employment First Act. The Act requires that state agencies that provide services and support to persons with disabilities shall consider, as their first option, competitive employment in an integrated setting for persons with disabilities. The Act does not require an employer to give preference to hiring persons with disabilities.
19 Delaware Code Chapter 7- Pregnant Workers Fairness Act (Senate Bill 212) 147 <sup>th</sup> General Assembly	Adds sex, including pregnancy, to protected class through Title 19, Chapter, 7 of the Delaware Code. Provides legal protection from Pregnancy Discrimination. Specific definitions include pregnancy which means pregnancy, childbirth, or related conditions, including but not limited to lactation. Provisions include, but are not limited to, accommodations, undue hardship and notice requirements, and employer and employee responsibilities.
19 Delaware Code Section 711 – “Ban the Box” (House Bill 167) 147 <sup>th</sup> General Assembly	This law makes it an unlawful employment practice for any public employer to inquire into or consider the criminal record, criminal history or credit history or score of an applicant for employment during initial application, including the first interview. Certain agency exceptions are stated in the Act. An applicant may be excluded from employment based on criteria stated in the Act as the employer may inquire into or consider an applicant’s criminal record, criminal history, credit history or credit score after completion of the first interview. The exclusion must be consistent with business necessity and the factors provided by statute must be taken into consideration.
19 Delaware Code Section 711 – Gender Identity Protection Act (Senate Bill 97) 147 <sup>th</sup> General Assembly	This Act adds the term "gender identity" to the already-existing list of prohibited practices of discrimination and hate crimes. As such, this Act would forbid discrimination against a person on the basis of gender identity in housing, employment, public works contracting, public accommodations, and insurance, and it would provide for increased punishment of a person who intentionally selects the victim of a crime because of the victim’s gender identity.

19 Delaware Code Sections 710 & 711 – Same Gender Civil Marriage (House Bill 75) 146 <sup>th</sup> General Assembly	This Act repeals the prohibition on same-gender marriage that was enacted in 1996. The effect of this Act is to allow two individuals, whether of the same or different genders, to marry if otherwise eligible.
House Concurrent Resolution 29 – Employment for Individuals who are Visually Impaired or Blind – 146 <sup>th</sup> General Assembly	This concurrent resolution recognizes the Division for the Visually Impaired and promotes equal employment opportunity in hiring by the State of Delaware for persons who are blind or visually impaired.
19 Delaware Code Section 724 – Unlawful Employment Practices Act	Prohibits discrimination practices by employers, employment agencies, labor unions in hiring, training, promotion, and all other areas of employment practices against qualified individuals with disabilities.
29 Delaware Code Section 5904 (A) – Agency Aide Program	Created the Agency Aide Program and the Selective Placement Program, which provide employment opportunities for persons with physical or mental disabilities. These programs enable Human Resource Management to employ qualified citizens with disabilities for work in various State agencies, without competitive examination or without listing, on an eligibility list. It further allows those individuals eventually to become employees of that agency.
Executive Order Number 8 of 2009	Continues the Governor's Council on Equal Employment Opportunity, directs state agencies to pursue equal employment and promotional opportunity for all state employees and applicants, and includes a strong recruitment and retention component. The Council is responsible for holding agencies accountable for implementing equal opportunity programs and assessing their compliance with the order.

### **Affirmative Action Plans**

Executive Order No. 8, issued on August 11, 2009, requires that every agency develop and submit Annual Affirmative Action Plans. These plans must include a profile of the workforce, a determination of under-representation affirmative action strategies, and a plan of action in which the agency states specific actions it will take to accomplish equal employment opportunity goals. All agencies are required to submit these plans no later than September 15th of each year. The plans are required to be in the uniform format developed and defined by Human Resource Management. Affirmative action practices and principles offer an opportunity to achieve diversity in the workforce by making a solid decision based on qualifications.

The goal of the affirmative action program is for managers and supervisors to make a conscious effort to ensure that minorities and women are given equal and fair consideration on the basis of qualifications and abilities. This action is not and cannot be interpreted to mean preferential treatment or quotas for minorities and women, which are expressly prohibited. See 19 Del.C. 711, 29 Del.C. 5953, and Merit Rule 2.1.

For additional information on state hiring practices, see Recruitment Procedures, which can be found at [http://www.delawarepersonnel.com/hrmrepdata/documents/del/recruitment\\_procedures.pdf](http://www.delawarepersonnel.com/hrmrepdata/documents/del/recruitment_procedures.pdf)

